

REMARKS

Claims 11-18 are pending in the present application. Claims 13 and 18 have been withdrawn from consideration by Examiner Manohar. By this Amendment, previously presented claims 1 and 17 have been amended. Applicants respectfully request reconsideration of the present claims in view of the foregoing amendments and the following remarks.

I. Formal Matters:

Election and Restriction

Applicants note that Examiner Manohar has made a final decision regarding (1) the restriction requirement between (i) the claims of Group I (i.e., claims 11-17) and (ii) the claim of Group II (i.e., claim 18), and (2) the election of species requirement encompassed by claims 11-12 and 14-17. At this time, previously present claims 13 and 18 are withdrawn from consideration.

However, Applicants note the following instructions from MPEP §1893.03(d):

If an examiner (1) determines that the claims lack unity of invention and (2) requires election of a single invention, when all of the claims drawn to the elected invention are allowable (i.e., meet the requirements of 35 U.S.C. 101, 102, 103 and 112), the nonelected invention(s) should be considered for rejoinder. Any nonelected product claim that requires all the limitations of an allowable product claim, and any nonelected process claim that requires all the limitations of an allowable process claim, should be rejoined. See MPEP § 821.04**. Any nonelected processes of making and/or using an allowable product should be considered for rejoinder**. >The examiner should notify applicants of potential rejoinder of non-elected process claims by placing form paragraph 8.21.04 at the end of any lack of unity determination made between a product and a process of making the product or between a product and a process of using the product. (Emphasis added.)

Applicants respectfully submit that if independent claim 1 is found to be allowable, withdrawn claims 13 and 18 should be rejoined according to the bold and underlined portion of MPEP §1893.03(d) provided above.

Applicants further note the following instructions from MPEP §1893.03(d):

As provided in 37 CFR 1.475(b), a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

- (1) A product and a process specially adapted for the manufacture of said product; or
- (2) **A product and process of use of said product**; or
- (3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; or
- (4) A process and an apparatus or means specifically designed for carrying out the said process; or
- (5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process. (Emphasis added.)

For at least the reasons given above, Applicants respectfully request rejoinder of all of claims 11-18 upon allowance of independent claim 1.

Information Disclosure Statement

Applicants provide herewith a supplemental Information Disclosure Statement (IDS) citing references previously submitted in (i) an April 08, 2005 IDS and (ii) a December 11, 2006 IDS. Applicants note that although the two Plieninger et al. references are in German, the two Plieninger et al. references clearly show chemical structures of compounds of interest in each reference.

Consideration of all of the references cited in the supplemental IDS is respectfully requested.

Claim Rejection – Non-Statutory Double-Patenting

Previously presented claims 11-12 and 14-16 were provisionally rejected under the judicially created doctrine of non-statutory obviousness-type double patenting as being unpatentable over claim 1 of copending U.S. Patent Application Serial No. 11/996,094 (hereinafter, “the ‘094 application”). This rejection is respectfully traversed.

Claims 11-12 and 14-16 of the present application are directed to compounds wherein the “Het” moiety (see the compound structure of formula (I) above) comprises “pyrrolyl

or pyrazolyl being substituted by groups R⁸, R⁹ and R¹⁰,” (i.e., a 5-member nitrogen-containing ring having two double bond therein). In contrast, claim 1 of the ‘094 application is directed to compounds wherein the moiety corresponding to the “Het” moiety of formula (I) above comprises a pyrazoline moiety (i.e., a 5-member nitrogen-containing ring having only a single double bond therein).

For at least the reasons given herein, claim 1 of the ‘094 application does not anticipate or make obvious Applicants’ claimed compounds embodied by claims 11-12 and 14-16 of the present application. Accordingly, withdrawal of this provisional rejection is respectfully requested.

Claim Rejections Under 35 U.S.C. § 112, First Paragraph

Claim 17 was rejected under 35 U.S.C. § 112, first paragraph, because the specification allegedly does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to practice the invention commensurate in scope with these claims. Applicants respectfully traverse this rejection.

Although Applicants believe previously presented claim 17 met the requirements of 35 U.S.C. § 112, first paragraph, Applicants have amended claim 17 as shown above. Support for the amendment to claim 17 may be found in at least the following locations of Applicants’ original specification: page 1, line 10; page 36, lines 12-14; and page 37, lines 7-20. Accordingly, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 112, second paragraph.

II. Conclusion:

For at least the reasons given above, Applicants submit that claims 11-12 and 14-17 define patentable subject matter. Accordingly, Applicants respectfully request allowance of these claims.

Should Examiner Manohar believe that further action is necessary to place the application in better condition for allowance, Examiner Manohar is respectfully requested to contact Applicants’ representative at the telephone number listed below.

Amendment And Response
Serial No. 10/530,737

No additional fees are believed due; however, the Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, to Deposit Account No. 503025.

Respectfully submitted,
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